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October 31, 2005

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington DC 20549-9303

RE: File Number S7-08-05, *Revisions to Accelerated Filer Definition and Accelerated Deadlines for Filing Periodic Reports*

Dear Mr. Katz:

We appreciate the opportunity to respond to the Commission's proposed rule, *Revisions to Accelerated Filer Definition and Accelerated Deadlines for Filing Periodic Reports.* We fully support the Commission's efforts to strike an appropriate balance between the needs of investors and the markets to receive timely Exchange Act reports and the needs of public companies and their auditors to have sufficient time to conduct, without undue cost, high-quality and thorough assessments, reviews and audits of the financial statements contained in those reports.

As we described in our September 2, 2005 letter to the Commission's Advisory Committee on Smaller Public Companies, we do not believe that the final stage of acceleration[1] for periodic report filing deadlines should be required for any issuers. Accordingly, we support the portion of the proposed rules that would eliminate the final stage of acceleration of the Form 10-Q filing deadline for both accelerated filers and large accelerated filers[2]. We also support the portion of the proposed rules that would maintain the current 75-day Form 10-K filing deadline for accelerated filers that are not large accelerated filers. However, we believe that the Commission's rules and forms should also be amended to vacate the final stage of acceleration of the Form 10-K filing deadline for large accelerated filers.

We believe that further acceleration of the filing deadlines for periodic reports would cause issuers to incur costs that are disproportionate to the incremental benefits to be derived by investors and markets from the earlier availability of the periodic reports. In either case, investors will continue to receive periodic reports based on prescribed 90-day intervals. In

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[1] Under current rules and form instructions, the Form 10-K filing deadline for companies that meet the existing definition of an accelerated filer is scheduled to change from 75 days after year end to 60 days after year end for fiscal years ending on or after December 15, 2005. The Form 10-Q filing deadline for issuers that meet the existing definition of an accelerated filer is scheduled to change from 40 days after quarter end to 35 days after quarter end for quarters of fiscal years ending on or after December 15, 2006.

[2] Unless the context indicates otherwise, throughout our response letter we use the terms accelerated filer and large accelerated filer in the same context as they are used in the proposed amendment to Exchange Act Rule 12b-2.

our view, "regular and reliable" reporting with predictable frequency (supplemented by enhanced "current" reporting under the recently revised Form 8-K rules) mitigates the need for "faster" reporting.

From our perspective, the acceleration that has already taken place has created a great deal of stress in the financial reporting system. Any additional acceleration would add to that stress and would further reduce the amount of time that management, audit committees and auditors will have to complete their respective responsibilities. We believe further acceleration would negatively impact the accuracy and reliability of financial reporting and would therefore not be in the best interest of investors or markets.

Consistent with our view that neither accelerated filers nor large accelerated filers should be subjected to the final stage of acceleration of periodic report filing deadlines, we do not believe that there is a need to bifurcate the current population of accelerated filers between those with public float between $75 million and $700 million and those with public float equal to or greater than $700 million.

We also support the Commission's reconsideration of the accelerated filer status exit criteria and we have suggested an alternative framework which we believe the Commission should consider. We believe that the entry and exit criteria should operate in tandem to provide a framework in which issuers with similar levels of public float are treated similarly. As a general matter, we believe that issuers should be permitted to exit accelerated filer status if they no longer exhibit the characteristics that qualified them for that status in the first place. At the same time, we recognize that there are important investor interests in maintaining filing deadline stability. We recommend that the Commission consider permitting issuers whose public float has been below $75 million for a sustained period of time (e.g., 4 consecutive quarters ending with the last business day of the second quarter) to exit accelerated filer status as of their next year-end. We believe that this approach strikes a balance between maintaining filing deadline stability (to avoid investor/market confusion) while providing that, over time, issuers with similar levels of public float will be treated similarly. We do not believe that an issuer should have to sustain a 67% or more decrease in public float before being able to exit accelerated filer status.

In the pages that follow, we submit for the Commission's consideration our views on some of the specific questions raised in its proposing release.

We would be pleased to discuss our comments and to answer any questions that the SEC staff or the Commission may have. Please do not hesitate to contact Vincent P. Colman (973-236-5390), Jay Hartig (973-236-7248) or Raymond Beier (973-236-7440) regarding our submission.

Sincerely,

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Is it appropriate to create a new category of accelerated filers known as "large accelerated filers?" Should we modify the proposed definition of "large accelerated filer" in any way?

Presently, the only purpose of designating a subset of the population of accelerated filers as large accelerated filers appears to be for determining which issuers would be subjected to the 60 day Form 10-K filing deadline. As stated above, we do not believe that any issuer should be subject to acceleration of the periodic report filing deadlines beyond the deadlines which are currently in place. Accordingly, we do not believe that there is any need to bifurcate the population of accelerated filers.

If the Commission concludes that further acceleration is required, we agree that it is appropriate that the additional acceleration apply only to the new category of accelerated filers defined as "large accelerated filers." We believe that the Commission's proposed definition of a "large accelerated filer" is reasonable for that purpose.

Are differences between the Securities Act Rule 405 definition of "well-known seasoned issuer" and the proposed Exchange Act Rule 12b-2 definition of "large accelerated filer" appropriate? Would any problems be created by differences between the two definitions?

As noted above, our view with respect to filing deadlines obviates the designation of large accelerated filers. However, if the Commission determines to adopt this new classification of issuer, we do not believe that the Commission should align the definitions of a "well-known seasoned issuer" and a "large accelerated filer."

The well-known seasoned issuer classification acknowledges that some registrants are followed by a number of sophisticated institutional and retail investors and analysts and are therefore entitled to additional flexibility in the way their communication and registration activities are conducted and regulated. In contrast, the "large accelerated filer" designation relates to the level of resources that an issuer is presumed to have available to its external reporting function which presumably correlates with their ability to produce financial reports more rapidly than other issuers.

There are a number of ineligibility criteria which would cause an issuer that meets the definition of a large accelerated filer to fail to qualify as a well-known seasoned issuer. As a general matter, these ineligibility criteria do not impact the timeframe in which an issuer is able to produce its periodic reports and, therefore, we do not believe they should enter into the determination of the periodic report filing deadlines. For example, an issuer would be an ineligible issuer[3] and therefore would not meet the definition of a well-known seasoned issuer

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[3] Securities Act Rule 405 defines several issuer-related characteristics, the presence of any one of which would preclude the issuer from qualifying as a "well-known seasoned issuer." The list of characteristics that renders an issuer as an "ineligible issuer" include, but is not limited to, failure to file all required Exchange Act reports during the preceding 12 months (with specified exceptions for certain Form 8-K reports); the issuer having filed a registration statement that is subject to a pending refusal or stop order proceeding or that was subject to a refusal or stop order during the past three years; or the issuer being the subject of a cease and desist proceeding relating to an offering.

if the issuer has not filed all required Exchange Act reports during the preceding 12 months. We do not believe that an issuer's failure to file a required Exchange Act report should result in that issuer receiving additional time to file its annual reports. Additionally, we believe that harmonizing the two definitions would likely lead to greater filing deadline instability which could be confusing to investors.

Additionally, well-known seasoned issuer status can, under certain circumstances, be applicable to an issuer that has no public float. The existence of significant public float is one of the fundamental principles underlying the accelerated filer/large accelerated filer requirements. Many of the reforms embodied in the Commission's *Securities Offering Reform* rule package are designed to encourage greater use of registered offerings for debt securities. Imposing accelerated filer status on debt-only issuers could have the effect of pushing those issuers toward the 144A or private debt markets in order to avoid accelerated filer status.

As proposed, an issuer would determine whether it must enter large accelerated filer status based on the aggregate worldwide market value of its outstanding voting and non-voting common equity as of the last business day of the issuer's most recently completed second fiscal quarter. Is it appropriate to tie the determination of large accelerated filer status and accelerated filer status to the last business day of the issuer's most recently completed second fiscal quarter? Should the determination be made over a longer period of time?

Our experiences over the past three years have indicated that in most cases the use of a single point in time (the last business day of the most recently completed second fiscal quarter) for determining whether the issuer satisfies the public float criterion of the accelerated filer definition is a workable model. The primary benefits to this method are the ease of performing the calculation and the ability for the issuer and investors to identify the filing deadlines well in advance of period end.

However, we are aware of instances in which an issuer's public float temporarily rises above $75 million around the end of the second fiscal quarter, thereby causing the issuer to be classified as an accelerated filer. Considering the current and proposed exit criteria, these issuers are essentially "trapped" in accelerated filer status because of a temporary market movement.

We believe that the entry and exit criteria should operate in tandem to provide a framework in which issuers with similar levels of public float are treated similarly. The current system relies on a single point of reference for determining entry into the system which could be subject to volatility which is not necessarily reflective of the issuer's ongoing public float. We believe there are several alternatives that would protect an issuer from this occurrence.

The determination of public float could be changed so that it is based on an average of the public float for some number of days (e.g., 30 days) prior to the end of the second fiscal quarter. Alternatively, the public float test could be assessed using multiple quarter-end float statistics (e.g., public float greater than or equal to the threshold established for four consecutive quarters prior to entry into accelerated filer or large accelerated filer status). Either of these methods would give a more balanced view of the public float which is, of course, being used as a proxy to determine the sophistication and efficiency of the entity's financial reporting capability. As discussed further below, we believe another alternative could be to revise the exit criteria so that an issuer does not have to sustain a catastrophic diminution in public float in order to return to non-accelerated filer status.

Do the proposed three tiers of filing deadlines provide appropriate balance and structure within the periodic reporting system? Would an alternate structure for reporting deadlines be preferable? If so, what criteria should we use to determine the appropriate deadlines?

As noted above, we do not believe that any issuer should be subject to acceleration of the periodic report filing deadlines beyond the deadlines which are currently in place. We believe that both accelerated and large accelerated filers should maintain the 75-day and 40-day filing deadlines currently required for Form 10-K and Form 10-Q, thereby retaining the two-tiered system that is currently in place. Moreover, it is relevant to note that the investor community has already adapted to the current two-tier system. Maintaining the current filing deadlines would prevent investors from having to further adapt to a three-tier system.

If, however, the Commission deems that further acceleration is warranted, we support the three tiers as proposed and application of additional acceleration only to large accelerated filers.

Should we change any of the filing deadlines for any category of issuer?

See response to question immediately above.

Would three tiers of filing deadlines cause confusion among investors regarding the due dates for companies' periodic reports? Is it necessary to distinguish large accelerated filers from smaller accelerated filers if the only effect of the distinction is to require large accelerated filers to file their annual reports 15 days earlier than smaller accelerated filers? If there should be a uniform set of deadlines that would apply to all accelerated filers, what should those deadlines be?

As noted above, we do not think that a three-tier system is necessary. While we have not surveyed investors, if the Commission determines to adopt the three-tiered structure, we suspect that the investor community would adjust rather quickly to the proposed filing dates. See above regarding application of a single set of requirements for all existing accelerated filers. If the Commission were to adopt the three-tiered system, we believe that it would be important to have a separate category of issuer (i.e., large accelerated filer) apart from regular accelerated filers.

Should we require large accelerated filers to file their quarterly reports within 35 days after quarter end, consistent with the deadline that is currently scheduled to be phased-in under existing requirements?

We support the Commission's proposal to maintain the 40-day Form 10-Q filing deadline for accelerated and large accelerated filers and believe that further acceleration of the Form 10-Q deadline could have a disproportionately negative impact on quality and cost. As a general matter, the acceleration that has already taken place has created a great deal of stress in the financial reporting system; we believe that any additional acceleration will negatively impact the accuracy and reliability of financial reporting.

Is it appropriate to maintain the current 75 and 40-day filing deadlines for accelerated filers that are not large accelerated filers? Do the current deadlines achieve our goal of providing detailed reports to the public as quickly as possible without compromising the reliability and accuracy of the reports?

As noted above, we support the Commission's proposal to maintain the 75- and 40-day deadlines for accelerated filers and we believe that these same filing deadlines should be applicable to large accelerated filers as well. We believe the current filing deadlines provide reliable and accurate periodic reports as quickly as possible. In that regard, we note that since the time that the Commission adopted the accelerated periodic report filing rules, the Commission has adopted rules aimed at enhancing the current reporting system (i.e., Form 8-K) which supplements the information contained in the periodic reports.

Would deadlines for accelerated filers and non-accelerated filers that are longer than the deadlines for large accelerated filers unduly disadvantage investors in companies that are not large accelerated filers?

We believe investors in smaller companies would benefit from earlier availability of periodic reports. However, while we have not surveyed investors, we do not believe that the benefits of accelerated availability of periodic reports for non-accelerated filers and accelerated filers *vis-à-vis* large accelerated filers are significant enough to justify the costs associated with greater acceleration. In any case, investors will continue to receive periodic reports based on prescribed 90-day intervals. In our view, "regular and reliable" reporting with predictable frequency (supplemented by enhanced "current" reporting under the recently revised Form 8-K rules) mitigates the need for "faster" reporting.

Should we revise the accelerated filer definition to allow issuers that fall below the $25 million public float threshold to exit accelerated filer status, as proposed? Would the proposal adversely impact investor protection in any material respect?

We agree with the Commission's effort toward re-evaluating the accelerated filer exit criteria. However, we believe that further enhancements to the framework are necessary in order to provide for a meaningful opportunity to exit accelerated filer (and large accelerated filer) status. With respect to investor protection, see our comments below regarding minimization of filing status changes through the use of a multiple quarter exit criteria analysis.

Is $25 million public float an appropriate threshold point at which an accelerated filer should be permitted to exit accelerated filer status? For example, should an accelerated filer instead be permitted to exit when its public float drops below $50 million? If not, what would be a more appropriate point and why?

As a general matter, we believe that companies should be permitted to exit accelerated filer status if they no longer exhibit the characteristics that qualified them for that status in the first place. Accordingly, we believe that an appropriate threshold for permitting exit from accelerated filer status is $75 million. However, we recognize that there are important investor interests in maintaining filing deadline stability so we would recommend that the Commission consider permitting companies whose public float has been below $75 million for a sustained period of time (e.g., 4 consecutive quarters ending with the last business day of the second quarter) to exit accelerated filer status as of their next year-end. We do not believe that an issuer should have to sustain a 67% or more decrease in public float before being able to exit accelerated filer status.

Is $75 million public float an appropriate threshold point at which a large accelerated filer should be permitted to exit large accelerated filer status? Should a large accelerated filer instead be allowed to exit when its public float has dropped to $250 million, $500 million, or some other threshold?

Similar to our views on exiting accelerated filer status, as a general matter, we believe that companies should be permitted to exit large accelerated filer status if they no longer exhibit the characteristics that qualified them for entry into that status. Accordingly, we believe that an appropriate threshold for permitting exit from large accelerated filer status is $700 million. However, we recognize that there are important investor interests in maintaining filing deadline stability, so we would recommend that the Commission consider permitting companies whose public float has been below $700 million for a sustained period of time (e.g., 4 consecutive quarters ending with the last business day of the second quarter) to exit large accelerated filer status as of their next year-end. We do not believe that an issuer should have to sustain a 90% or more decrease in public float before being able to exit large accelerated filer status.

As proposed, an issuer would determine whether it can exit accelerated filer status at the end of the fiscal year and for its upcoming annual report based on the aggregate worldwide market value of the issuer's outstanding voting and nonvoting common equity as of the last business day of the issuer's most recently completed second fiscal quarter. Is this an appropriate date upon which to determine whether an issuer should be able to exit accelerated filer status? Should the determination instead be tied to the end of the fiscal year? Is tying the determination to a specific date appropriate, or should the determination be made over a longer period of time based on an average aggregate worldwide market value? How could we improve the timing and method of determination?

We believe our views on these questions are addressed in our responses to previous questions in this letter.

Is it appropriate to allow such an issuer to exit accelerated filer status only at the end of a fiscal year, or should the issuer be able to begin filing on a non-accelerated filer basis with respect to quarterly reports when the issuer is no longer subject to Exchange Act reporting with respect to its common equity securities during one of its first three quarters? Would the proposal, if adopted, adversely impact investor protection in any material respect?

As a general matter, we believe that changes in accelerated filer or large accelerated filer status should take place at year end. We believe it is in the best interest of investors not to have changes in status during the year. One exception to this rule would be in the context of an issuer whose entire public float is eliminated. We believe that companies whose public float goes to $0 (e.g., in a going private transaction or in a merger/acquisition), should be permitted to exit accelerated or large accelerated filer status immediately.

Should we, as proposed, allow an issuer to exit accelerated filer status if it has no voting or non-voting common equity held by non-affiliates and no duty to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act with respect to any common equity securities, but still has a duty to file such reports with respect to its debt securities?

We agree that an issuer that has no public float and no duty to file reports pursuant to Section 13(a) or 15(d) of the Securities Exchange Act with respect to any equity securities should be allowed to exit accelerated filer status. As noted above, we believe that these issuers should be permitted to exit accelerated filer status immediately.

There have been a number of comments raised to the SEC Staff by the AICPA's SEC Regulations Committee surrounding the application of the accelerated filer rules relating to companies whose public float is eliminated, but they are either required to file reports for another security or they are filing reports "voluntarily". The SEC Regulations Committee has also posed other questions to the SEC Staff with respect to the application of the accelerated filer test for a company that has previously been a debt-only registrant and then completes an equity IPO on Form S-1, and for a company that is a subsidiary of an accelerated filer. We believe that the Commission should address those questions, as well as similar questions relating to the application of the accelerated filer criteria in connection with reverse mergers, in any subsequent adopting release or in a timely FAQ document.

Should an issuer be required to file a notice with the Commission, such as on Form 8-K, announcing that there has been a change in its periodic report filing deadline status (i.e., the issuer has moved from one tier in the proposed three-tier accelerated filing system to a different tier)? If so, when should that issuer be required to file the notice?

We believe issuers should be required to notify the Commission of a status change by filing a Form 8-K within four business days of the date that they have determined that they will have a change in status, but no later than the filing date of the 2nd quarter Form 10-Q.

Should we make the proposed conforming revisions to Regulation S-X and the transition reports required by Rules 13a-10 and 15d-10?

We believe that conforming changes should be made to Regulation S-X and to Rules 13a-10 and 15d-10.

Additionally, we believe that the final rules should codify the views expressed by the SEC staff at the April 2004 AICPA SEC Regulations Committee meeting in relation to how a registrant should determine its accelerated filer status in connection with a change in year-end. The SEC staff indicated in that forum that the registrant should reassess its status as an accelerated filer as of the end of the transition period (i.e., its new fiscal year end) treating the transition period as if it were a full fiscal year without regard to the length of the transition period. The Staff's viewpoint was that the public float test should be based on the last business day of what would have been the registrant's most recently completed second fiscal quarter if the close of the transition period were actually the end of a full fiscal year (e.g., a pro forma second fiscal quarter).

Is there any reason why we should not amend the aggregate market value condition in the accelerated filer definition, as proposed, to refer to a company's aggregate worldwide market value?

We believe that the Commission should codify existing staff practice in this area. We recommend the SEC incorporate language throughout the proposed rule to indicate that an issuer's aggregate worldwide market value is based upon the U.S. dollar equivalent of the stated threshold. An example should also be provided for how this calculation should be made.

Other

In Section VIII, *Update to Codification of Financial Reporting Policies*, 5(b), the revised wording for the first paragraph of Section 302.01.c should read "as of an interim date within 130 days if the registrant is a large accelerated filer or an accelerated filer (or 135 days for other registrants)" to be consistent with the proposed rule that all accelerated and large accelerated filers maintain the 40 day filing requirement for their Form 10-Qs.

In Section 240.12b-2, *Definitions*, 3(iii), reference to "determination date" should be modified to indicate "last business day of the issuer's most recently completed second fiscal quarter".

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